



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

May 20, 2022

Jennifer Everett
Environmental Management Commission
Sent via email only to: Jennifer.Everett@ncdenr.gov

Re: Objection to 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405

Dear Ms. Everett:

At its meeting on May 19, 2022, the Rules Review Commission objected to Rules 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405 in accordance with G.S. 150B-21.10.

Specifically, the Commission found the agency lacked statutory authority to adopt Rules 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405 as the agency was barred from doing so pursuant to G.S. 150B-19.3(a). Further, the Commission found the definition of the term “impact” in Rule 15A NCAC .02H .1401, and as applied to Rules .1402, .1403, .1404, and .1405 was unclear and ambiguous as it did not provide certainty as to what acts were subject to regulation. Finally, the Commission found that the post-publication change from “discharge” to “impact” in Rule 15A NCAC 02H .1401, and as applied to Rules .1402, .1403, .1404, and .1405 amounted to a substantial change pursuant to G.S. 150B-21.2(g)(3), in that it produced an effect that could not reasonably have been expected based on the proposed text of these Rules.

Please respond to this objection in accordance with the provisions of G.S. 150B-21.12.

If you have any questions regarding the Commission’s actions, please let me know.

Sincerely,

Brian Liebman
Commission Counsel

Donald Robert van der Vaart, Director
Chief Administrative Law Judge

Fred G. Morrison, Jr.
Senior Administrative Law Judge

An Equal Employment Opportunity Employer
1711 New Hope Church Road, Raleigh, NC 27609
Telephone: (984) 236-1850 | Facsimile: (984) 236-1871
www.oah.nc.gov